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HOUSE BILL 626

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO DOMESTIC VIOLENCE; ENACTING THE UNIFORM INTERSTATE
ENFORCEMENT OF DOMESTIC-VIOLENCE PROTECTION ORDERS ACT;
ESTABLISHING PROCEDURES FOR THE ENFORCEMENT OF ORDERS; AMENDING
A SECTION OF THE FAMILY VIOLENCE PROTECTION ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE. -- Sections 1
through 9 of this act may be cited as the "Uniform Interstate
Enforcement of Domestic-Violence Protection Orders Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS. -- As used in the
Uniform Interstate Enforcement of Domestic-Violence Protection
Orders Act:

A. "foreign protection order" means a protection
order issued by a tribunal of another state;

B. "issuing state" means the state whose tribunal

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1 issues a protection order;

2 C. "mutual foreign protection order" means a
3 foreign protection order that includes provisions in favor of
4 both the protected individual seeking enforcement of the order
5 and the respondent;

6 D. "protected individual" means an individual
7 protected by a protection order;

8 E. "protection order" means an injunction or other
9 order, issued by a tribunal under the domestic-violence,
10 family-violence or anti-stalking laws of the issuing state, to
11 prevent an individual from engaging in violent or threatening
12 acts against, harassment of, contact or communication with or
13 physical proximity to another individual;

14 F. "respondent" means the individual against whom
15 enforcement of a protection order is sought;

16 G. "state" means a state of the United States, the
17 District of Columbia, Puerto Rico, the United States Virgin
18 Islands or any territory or insular possession subject to the
19 jurisdiction of the United States. The term includes an Indian
20 tribe or band that has jurisdiction to issue protection orders;
21 and

22 H. "tribunal" means a court, agency or other entity
23 authorized by law to issue or modify a protection order.

24 SECTION 3. "[NEW MATERIAL] JUDICIAL ENFORCEMENT OF
25 ORDER. --

. 144373. 1

1 A. A person authorized by the law of this state to
2 seek enforcement of a protection order may seek enforcement of
3 a valid foreign protection order in a tribunal of this state.
4 The tribunal shall enforce the terms of the order, including
5 terms that provide relief that a tribunal of this state would
6 lack power to provide but for this section. The tribunal shall
7 enforce the order, whether the order was obtained by
8 independent action or in another proceeding, if it is an order
9 issued in response to a complaint, petition or motion filed by
10 or on behalf of an individual seeking protection. In a
11 proceeding to enforce a foreign protection order, the tribunal
12 shall follow the procedures of this state for the enforcement
13 of protection orders.

14 B. A tribunal of this state may not enforce a
15 foreign protection order issued by a tribunal of a state that
16 does not recognize the standing of a protected individual to
17 seek enforcement of the order.

18 C. A tribunal of this state shall enforce the
19 provisions of a valid foreign protection order which govern
20 custody and visitation, if the order was issued in accordance
21 with the jurisdictional requirements governing the issuance of
22 custody and visitation orders in the issuing state.

23 D. A foreign protection order is valid if it:
24 (1) identifies the protected individual and
25 the respondent;

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(2) is currently in effect;

(3) was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order or, in the case of an ex parte order, the respondent was given notice and had or will have an opportunity to be heard within a reasonable time after the order was issued, in a manner consistent with the respondent's due process rights.

E. A foreign protection order valid on its face is prima facie evidence of its validity.

F. Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

G. A tribunal of this state may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) the respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) the tribunal of the issuing state made specific findings in favor of the respondent.

SECTION 4. [NEW MATERIAL] NON-JUDICIAL ENFORCEMENT OF

. 144373. 1

1 ORDER. --

2 A. A law enforcement officer of this state, upon
3 determining that there is probable cause to believe that a
4 valid foreign protection order exists and that the order has
5 been violated, shall enforce the order as if it were the order
6 of a tribunal of this state. Presentation of a protection
7 order that identifies both the protected individual and the
8 respondent and, on its face, is currently in effect constitutes
9 probable cause to believe that a valid foreign protection order
10 exists. For the purposes of this section, the protection order
11 may be inscribed on a tangible medium or may be stored in an
12 electronic medium or other medium if it is retrievable in
13 perceivable form. Presentation of a certified copy of a
14 protection order is not required for enforcement.

15 B. If a foreign protection order is not presented,
16 a law enforcement officer of this state may consider other
17 information in determining whether there is probable cause to
18 believe that a valid foreign protection order exists.

19 C. If a law enforcement officer of this state
20 determines that an otherwise valid foreign protection order
21 cannot be enforced because the respondent has not been notified
22 or served with the order, the officer shall inform the
23 respondent of the order, make a reasonable effort to serve the
24 order upon the respondent and allow the respondent a reasonable
25 opportunity to comply with the order before enforcing the

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1 order.

2 D. Registration or filing of an order in this state
3 is not required for the enforcement of a valid foreign
4 protection order pursuant to the Uniform Interstate Enforcement
5 of Domestic-Violence Protection Orders Act.

6 SECTION 5. [NEW MATERIAL] IMMUNITY. --The state or a local
7 governmental agency, or a law enforcement officer, prosecuting
8 attorney, clerk of court or any state or local governmental
9 official acting in an official capacity, is immune from civil
10 and criminal liability for an act or omission arising out of
11 the registration or enforcement of a foreign protection order
12 or the detention or arrest of an alleged violator of a foreign
13 protection order if the act or omission was done in good faith
14 in an effort to comply with the provisions of the Uniform
15 Interstate Enforcement of Domestic-Violence Protection Orders
16 Act.

17 SECTION 6. [NEW MATERIAL] OTHER REMEDIES. --A protected
18 individual who pursues remedies pursuant to the provisions of
19 the Uniform Interstate Enforcement of Domestic-Violence
20 Protection Orders Act is not precluded from pursuing other
21 legal or equitable remedies against a respondent.

22 SECTION 7. UNIFORMITY OF APPLICATION AND CONSTRUCTION. --
23 In applying and construing the provisions of the Uniform
24 Interstate Enforcement of Domestic-Violence Protection Orders
25 Act, consideration must be given to the need to promote
uniformity of the law with respect to its subject matter among
states that enact it.

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SECTION 8. [NEW MATERIAL] SEVERABILITY CLAUSE. --If any provision of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of that act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

SECTION 9. [NEW MATERIAL] TRANSITIONAL PROVISION. --The Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act applies to protection orders issued before July 1, 2003 and to continuing actions for enforcement of foreign protection orders commenced before July 1, 2003. A request for enforcement of a foreign protection order made on or after July 1, 2003 for violation of a foreign protection order that occurred before July 1, 2003 is governed by the provisions of the Uniform Interstate Enforcement of Domestic-Violence Protection Orders Act.

Section 10. Section 40-13-6 NMSA 1978 (being Laws 1987, Chapter 286, Section 6, as amended) is amended to read:

"40-13-6. SERVICE OF ORDER- -DURATION- -PENALTY- -REMEDIES NOT EXCLUSIVE. --

A. An order of protection granted under the Family Violence Protection Act shall be filed with the clerk of the

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1 court, and a copy shall be sent by the clerk to the local law
2 enforcement agency. The order shall be personally served upon
3 the respondent, unless he or his attorney was present at the
4 time the order was issued. The order shall be filed and served
5 without cost to the petitioner.
6

7 B. An order of protection granted by the court
8 involving custody or support shall be effective for a fixed
9 period of time not to exceed six months. The order may be
10 extended for good cause upon motion of the petitioner for an
11 additional period of time not to exceed six months. Injunctive
12 orders shall continue until modified or rescinded upon motion
13 by either party or until the court approves a subsequent
14 consent agreement entered into by the petitioner and the
15 respondent.
16

17 C. A peace officer shall arrest without a warrant
18 and take into custody a person whom the peace officer has
19 probable cause to believe has violated an order pursuant to
20 this section.
21

22 ~~[D. State courts shall give full faith and credit~~
23 ~~to tribal court orders of protection and orders of protection~~
24 ~~issued by courts of other states. A protection order issued by~~
25

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1 ~~a state or tribal court against one who has petitioned, filed a~~
2 ~~complaint or otherwise filed a written pleading for protection~~
3 ~~against abuse by a spouse or intimate partner is not entitled~~
4 ~~to full faith and credit if:~~

5
6 (1) ~~no cross or counter petition, complaint or~~
7 ~~other written pleading was filed seeking such a protection~~
8 ~~order; or~~

9 (2) ~~a cross or counter petition has been filed~~
10 ~~and the court did not make specific findings that each party~~
11 ~~was entitled to such an order.~~

12
13 ~~E.]~~ D. A person convicted of violating an order of
14 protection granted by a court under the Family Violence
15 Protection Act is guilty of a misdemeanor and shall be
16 sentenced in accordance with Section 31-19-1 NMSA 1978. Upon a
17 second or subsequent conviction, an offender shall be sentenced
18 to a jail term of not less than seventy-two consecutive hours
19 that shall not be suspended, deferred or taken under
20 advisement.
21

22 ~~[F.]~~ E. In addition to any other punishment
23 provided in the Family Violence Protection Act, the court shall
24 order a person convicted to make full restitution to the party
25

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1 injured by the violation of an order of protection and order
2 the person convicted to participate in and complete a program
3 of professional counseling, at his own expense, if possible.

4 [G-] F. In addition to charging the person with
5 violating an order of protection, a peace officer shall file
6 all other possible criminal charges arising from an incident of
7 domestic abuse when probable cause exists.

8 [H-] G. The remedies provided in the Family
9 Violence Protection Act are in addition to any other civil or
10 criminal remedy available to the petitioner."
11

12 SECTION 11. EFFECTIVE DATE. --The effective date of the
13 provisions of this act is July 1, 2003.
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